

MINUTES OF THE SPECIAL JOINT COMMUNITY IMPROVEMENT COMMISSION AND
ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY MEETING
TUESDAY- - JUNE 28, 2005- - 6:45 P.M.

Chair Johnson convened the Special Joint Meeting at 7:22 p.m.

ROLL CALL - Present: Commissioner/Board Member Daysog, deHaan, Gilmore, and Chair Johnson - 4.

Absent: Commissioner/Board Member Matarrese - 1.

Note: Chair Johnson announced that Commissioner/Board Member Matarrese would not be teleconferencing from El Salvador because the phone connection was not working.

AGENDA ITEM

(05-034CIC) Discussion/review of the City Charter and related Alameda Reuse and Redevelopment Authority (ARRA) and Community Improvement Commission (CIC) policy, procedures, and management practices.

Chair Johnson stated that the City Attorney was requested to provide thoughts on emergency spending for outside counsel; noted that the hiring of outside counsel is approved by the Council and that some slight revisions need to be made to the CIC and ARRA By-laws, etc. in order to provide consistency between the City Council, CIC and ARRA.

Commissioner/Board Member Daysog inquired whether the issue of hiring outside counsel was related to determining what the threshold would be.

Chair Johnson responded that the City Attorney was to provide information on how much would be required to cover the interim period before the matter was brought back to the Council.

Commissioner/Board Member Gilmore stated that she understood that the matter would be addressed at a meeting in July.

Chair Johnson stated that a memo was received stating that an outside attorney had been hired; the City Attorney indicated that the issue regarding hiring of outside counsel applied to the Council, not the CIC or ARRA.

The City Attorney distributed the minutes of the June 7, 2005 Council Meeting; stated the Council requested a proposal from the

City Attorney's office for a future meeting; noted the hiring of outside counsel was not part of the budget adoption.

Chair Johnson stated the matter could be brought back at the July 5 City Council Meeting if the Council action is not clear.

The City Attorney stated the matter is on the July 5 Council agenda per Council's request for discussion in closed session; noted that she was requested to provide a proposal at the last performance evaluation.

Chair Johnson stated different interpretations of the Council's actions at the June 7 Council Meeting are not necessary; the Council can place the matter on the July 5 Council Meeting in open session; that she does not believe the matter is a closed session item.

Commissioner/Board Member Gilmore stated that she distinctly remembers that there was a certain amount of concern in discussing authorized amounts in open session because of litigation strategies.

Chair Johnson stated that the concept needs to be adopted in open session.

The City Attorney stated that she is proceeding to provide a proposal at the July 5 Closed Session Meeting in order to not reveal litigation strategies and to respond to the Council's request for additional oversight and threshold identification; any budget amendments should subsequently be placed on an open session agenda; at the last performance evaluation, the Council requested that the matter initially be addressed in closed session.

Chair Johnson stated there is also direction that action has to be consistent with the Charter.

The City Attorney concurred with Chair Johnson.

Chair Johnson stated that the Charter provides that the Council consent to the hiring of outside counsel.

The City Attorney distributed an opinion by Robert Logan which addressed budget appropriations and authorizations; stated that it is appropriate for the Council to follow the pattern and practice that has been in place for over 16 years and which was adopted at no less than five public meetings where a budget appropriation for the City Attorney was authorized; stated that she did understand

the Mayor's request and would return with an oversight proposal.

Chair Johnson stated that the direction to operate consistently with what the Charter provides has already been given to the City Attorney.

The City Attorney concurred with Chair Johnson; stated that the attorney retained by the Council in 1989 provided an analysis of the direction regarding retention of outside counsel.

Chair Johnson stated that the Council also gave direction regarding the Charter stating that the Council consent is required to hire outside attorneys.

The City Attorney stated that the consent has been given through the budget in the past 16 years; the policy can be changed and would be discussed on July 5th.

Commissioner/Board Member Daysog stated that the budget enables the City Manager and department heads to hire individuals; the Council does not need to be involved in the actual hiring but might want to be involved in instances above or below certain thresholds; stated that the Council is moving in the right direction.

Commissioner/Board Member deHaan stated the initial clarification would be with the Charter; noted there is dispute between the City Attorney and the Council; the Council feels that they have the authority to consent to the hiring of outside legal counsel.

Chair Johnson stated that there is no need to hire an attorney to provide an opinion on the language of the Charter; the language of the Charter is very plain and clear.

Commissioner/Board Member deHaan stated the Council could move forward if the language of the Charter has been determined.

Chair Johnson stated that there is a \$470,000 litigation contingency in Risk Management and an additional \$350,000 for Alameda Power & Telecom; noted that the City Attorney is stating that the Council has consented to the hiring of outside counsel by approving the line items in the budget over the past 16 years; the Council has given a blanket authorization to the City Attorney to hire outside counsel and that is not the level of oversight that the Charter intends; the Charter was drafted to provide needed checks and balances; the City Attorney's office has five attorneys and also spends a significant amount of money on outside counsel; stated that the Council should have more of a role in the hiring of

outside counsel and needs to be more in line with the intention of the Charter; changes can be made as time goes on and when the Council feels more comfortable; a lot of money is being spent on outside attorneys and the Council has an obligation to be more aware of outside attorney costs.

Commissioner/Board Member Daysog stated that defining the parameters of discretion and how the discretion relates to Section 8-5 of the Charter is the issue; the Council is in the process of defining discretionary parameters of "may empower"; the City Attorney or any other City office meets Council expectations through the establishment of the budget; threshold parameters need to be established; the Council is moving in the direction that will work for both sides but will not be established tonight.

Chair Johnson stated that clear direction was given to the City Attorney to bring the matter of hiring of outside counsel back to the Council at the last Closed Session Meeting.

Commissioner/Board Member Daysog stated that his interpretation of the Charter is that because there was no specific ordinance or resolution defining "may empower" the past practice is still in effect.

Chair Johnson stated that is not what she heard at the last meeting.

The City Attorney stated that she is working on a proposal to be presented to the City Council on July 5; that she hears what the Council is saying and understands that there is a desire for additional oversight; the proposal will provide additional Council involvement and discretion, and provide significantly less discretion on the City Attorney's part.

Chair Johnson stated that the Council is not asking for less discretion on the City Attorney's part; stated that Council should do what the Charter says; the interpretation of the Charter could be that the Council gives consent to the City Attorney to spend money on outside attorneys by putting a line item in the budget or the interpretation of the Charter can be that the Council is not going to give consent by a line item; the latter was made clear at the June 7 Joint City Council, CIC, ARRA Meeting; the Council is allocating \$470,000 but the City Attorney does not have the discretion to spend it without the Council's consent.

The Acting City Manager stated that the [June 7] action of the Council was to adopt the budget; Chair Johnson requested the City

Attorney to bring the hiring of outside counsel to Council but the matter was not part of the motion; that he is not sure how many other Councilmembers gave the direction to the City Attorney; staff follows direction given by the Council; it is not necessary to have a motion and vote; the City Attorney would provide a proposal to determine the extent of Council overview; that he questions whether the City Attorney should hire outside counsel or come to the Council voluntarily to request consent of hiring outside counsel.

Chair Johnson inquired whether the City Attorney could come to Council when the hiring of outside counsel was necessary in the interim, to which the City Attorney responded that she would not hire outside counsel until July 5; noted that there are existing counsel, bills and litigation.

Chair Johnson stated that the Council is not addressing attorneys that are already working for the City.

Commissioner/Board Member Daysog inquired whether the City Attorney intended to hire new outside counsel in the next ten days, to which the City Attorney responded in the negative.

Commissioner/Board Member deHaan stated the Council requested a summary of existing litigation and hopes to have the information provided at the next meeting; ARRA has a substantial amount of litigation; noted there are fixed and variable portions of the budget; Council would like to keep control of outside counsel spending; the oversight philosophy is important.

Chair Johnson stated that all the Council agreed that there was a need to provide some authority for emergency spending.

Commissioner/Board Member Gilmore stated that that it is important to establish a policy that is consistent across all governing bodies.

Commissioner/Board Member deHaan stated that the Council requested to be involved in interim decisions and hopes to be receiving said information.

Chair Johnson stated that the Council requested a list of attorneys, including scope of service; the information should be presented before the next Council meeting; inquired whether the City Attorney's proposal would be in the agenda packet or presented in advance; stated she would prefer that the proposal was not distributed to the Council on the night of the meeting.

The City Attorney stated the information would be provided to the Council before the City Council Meeting; stated that she would bring the proposal to the July 5 Closed Session Meeting with the advanced copy of all information requested; she hears the Council direction in terms of a desire for policy direction to provide the additional thresholds and Council involvement and oversight for all governing bodies; matters would be discussed and direction taken from the Council.

Chair Johnson stated that she does not expect that any outside counsel would need to be hired within the next week, inquired what was decided on the interim.

The City Attorney responded that she would like the Council to keep a reasonable, fair and equitable approach; all department heads are authorized to spend monies when the budget is adopted; \$75,000 or less is the current amount without Council authorization.

Chair Johnson stated that no one else in the City has authorization to spend over \$800,000.

The City Attorney reiterated her request for a reasonable approach.

Chair Johnson stated that the Council is always fair and reasonable; stated that she made it clear at the budget meeting that the Council is not changing the amount of the City Attorney's budget but is exercising Council responsibility.

Commissioner/Board Member deHaan stated that the direction for other City departments might change also; the City is in extraordinary times in reviewing the budget, controlling staffing, and developing needed services.

Commissioner/Board Member Gilmore stated that the Council does not want to make it significantly more difficult for the City Attorney to be able to do her job.

Commissioner/Board Member Daysog stated that delivery of successful services to the residents is ultimately the end responsibility; the question of reasonableness is not incidental; rapid responses are necessary for the legal team; the City is shooting itself in the foot if rules do not allow for rapid responses.

The City Attorney stated that she is fully confident that the proposal submitted on July 5 will be adequate for all purposes.

Chair Johnson requested that the City Attorney summarize her

understanding of the Council's direction.

The City Attorney stated that the direction from the Council was to provide a proposal that addresses issues regarding the Charter, Council oversight in order to provide a threshold to limitation of the City Attorney's current budgeting authority, and to address other issues discussed, i.e., an RFQ panel of attorneys.

Chair Johnson stated the Council does not intend to limit the dollar amount; the Council could spend \$800,000 on one case; the focus is on hiring outside counsel.

The Acting City Manager stated that sometimes it is not known how much money will be necessary for hiring outside attorneys in cases where the City gets sued; usually there is a proposal from a consultant advising what the cost will be when other departments hire consultants; the Council would like to be advised who the outside counsel would be.

Chair Johnson stated it is not necessary to have a dollar amount in contracts; the Council needs to be advised who the attorney is that would handle the matter.

Councilmember Daysog stated that it is not in the interest of the public for the Council to be involved in every single hiring decision; there should be a threshold.

Vice Mayor Gilmore stated that the Council does not want to be involved in every single hiring decision.

Chair Johnson stated there would be a greater awareness and sensitivity to hiring outside counsel; there have been instances where the Council has questioned why outside counsel was hired; the issue is not a dollar limit; stated the Council could discuss the type of issues that should involve the Council; the City Attorney could address the matter in her proposal.

Councilmember deHaan requested a summary of litigation and the estimates for finalization; requested that the Council receive advanced notice when the amount of a consultant's contract is anticipated to increase.

Councilmember deHaan stated that all managers should be able to provide the Council with an on-going ledger.

Chair Johnson stated that the task of providing the ledger to the Council should not be burdensome; requested that the City Attorney

advise the Council if the task would be burdensome.

Commissioner/Board Member Gilmore stated that the Council would rather have the City Attorney perform legal work than administrative work; stated the City Attorney is obviously more valued as a lawyer.

Adjournment

There being no further business, Chair Johnson adjourned the Special Joint Meeting at 8:57 p.m.

Respectfully submitted,

Lara Weisiger, Secretary
Community Improvement Commission

The agenda for this meeting was posted in accordance with the Brown Act.